

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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ELLIOT ZOMBER,

Plaintiff,

ORDER

-against-

CV 09-4637 (ETB)

P.O. KENNETH STOLZ,

Defendant.

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Before the Court is the parties' joint motion to vacate the judgment entered on October 17, 2011, following a jury verdict in favor of plaintiff, pursuant to Federal Rule of Civil Procedure 60(b). The parties base their application on the grounds that an order vacating the underlying judgment is a precondition to settlement. (Joint Mot. to Vacate J. 4)

"Despite the public interest in preserving precedent, vacatur is authorized in order to permit settlement to proceed, particularly where the victor as well as the losing party is in agreement that vacatur would be desirable." Chamberlain v. Aberdeen Asset Mgmt. Ltd., No. 02 CV 5870, 2005 WL 1378757, at \*1 (E.D.N.Y. Apr. 12, 2005) (citing Major League Baseball Props., Inc. v. Pac. Trading Cards, Inc., 150 F.3d 149 (2d Cir. 1998)). Accordingly, the parties' motion is granted.

The judgment entered in favor of plaintiff on October 17, 2011 is hereby VACATED. Plaintiff's motion for attorney's fees, which, by Order dated January 26, 2012, the Court deferred ruling on, is withdrawn. This action is dismissed in its entirety.

**SO ORDERED:**

Dated: Central Islip, New York  
May 3, 2012

/s/ E. Thomas Boyle  
E. THOMAS BOYLE  
United States Magistrate Judge